

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

STEVEN WYNN, ELAINE WYNN, WYNN
RESORTS LIMITED AND WYNN RESORTS L.L.C.,

Plaintiffs,

-against-

LEXINGTON INSURANCE COMPANY, and
ALLIED WORLD ASSURANCE COMPANY (US),
INC.,

Defendants.

Civ. Action No.
07 Civ. 7604 (NRB)(MHD)

**DECLARATION OF STUART P.
SLOTNICK IN SUPPORT OF
PLAINTIFFS' OPPOSITION TO
DEFENDANTS' MOTION TO
COMPEL APPRAISAL AND
STAY PENDING ACTION**

Stuart P. Slotnick, an attorney duly admitted to practice law before the Courts of the State of New York and in this District Court, does hereby declare under penalty of perjury that the following statements are true:

1. I am an attorney at the law firm of Buchanan Ingersoll & Rooney PC, which represents the Plaintiffs Steven Wynn, Elaine Wynn, Wynn Resorts Limited, and Wynn Resorts L.L.C. (collectively referred to herein as "Plaintiffs"). As such, I am familiar with the facts and circumstances of this action. I submit this Declaration in support of Plaintiffs' Opposition to Defendants' Motion to Compel an Appraisal and to Stay the Pending Action.

2. Attached as Exhibit "1" is Plaintiffs' ALL RISK INCLUDING FLOOD Insurance Policy No. 1374229 issued by Lexington Insurance Company ("Lexington Policy").

3. Attached as Exhibit "2" is Plaintiffs' ALL RISK INCLUDING FLOOD Insurance Policy No. AW1374229 issued by Allied World Assurance ("Allied Policy").

4. Attached as Exhibit "3" is Tishman Construction Loss Report, dated January 4, 2005, bearing Bates Stamp Nos. LEX 000012-LEX 000021.

5. Attached as Exhibit “4” is Tishman Construction Loss Report (“Follow-up #3”), dated February 4, 2005, bearing Bates Stamp Nos. LEX 000083-LEX 000095.

6. Attached as Exhibit “5” is a Memorandum dated January 2, 2005 from James E. Podesva, York Insurance Services, Inc.: Specialized Adjusting Division, to the File, regarding his inspection of Plaintiffs’ Apartment. (Also annexed to Marino Decl. as Ex. “A.”)

7. Attached as Exhibit “6” are e-mail correspondence among the parties and their representatives bearing Bates Stamp Nos. LEX 000022, LEX 000044, LEX 000064, and LEX 000206-LEX 000212.

8. Attached as Exhibit “7” is a Letter from Laurence Molloy, LLC to Stuart Slotnick, dated December 3, 2005, regarding a mold and air quality inspection at Plaintiffs’ Apartment.

9. Attached as Exhibit “8” is a Letter from Matthew J. Herrington, Esq. to Plaintiff Steven Wynn, c/o Barry I. Slotnick, Esq., dated October 15, 2007, demanding an appraisal. (Also annexed to Marino Decl. as Ex. “O.”)

10. Attached as Exhibit “9” are Proof of Loss Statements submitted by Plaintiffs to Defendants Lexington and Allied, dated June 7, 2005 and October 3, 2007.

11. Attached as Exhibit “10” is Defendants’ Answer to the Original Complaint, dated January 30, 2008.

12. Further, Defendants' statement in their moving memorandum that Plaintiffs are seeking "payment for many items ... including new windows" (Defs.' Mem. at 4) is outright untrue. Plaintiffs' counsel has specifically communicated to Defendants on numerous occasions that reimbursement for new windows are not being sought.

Dated: May 23, 2008
New York, New York

BUCHANAN INGERSON & ROONEY PC

By: 

Barry I. Slotnick, Esq.
Stuart P. Slotnick, Esq.
620 Eighth Avenue, 23rd Floor
New York, NY 10018
(212) 440-4400

Attorneys for Plaintiffs
Wynn Resorts Limited, Wynn Resorts L.L.C
Steve Wynn, Elaine Wynn